

# State of South Dakota

## EIGHTY-THIRD SESSION LEGISLATIVE ASSEMBLY, 2008

808P0713

### HOUSE ENGROSSED NO. **SB 186** - 2/26/2008

Introduced by: Senators Knudson, Albers, Dempster, Gant, Gray, and Hansen (Tom) and  
Representatives Rhoden, Brunner, Cutler, Deadrick, Dykstra, Faehn,  
Heineman, Krebs, Olson (Russell), Rave, Turbiville, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public records.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 1-26D-4 be amended to read as follows:

4 1-26D-4. Hearing examiners have all powers delineated in §§ 1-26-19.1 and 1-26-19.2 and  
5 shall hear all contested cases that arise under Titles 10 and 58 and chapter 1-27.

6 Section 2. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 The provisions of this Act do not apply to the Unified Judicial System or Public Utilities  
9 Commission.

10 Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Any informal request for disclosure of documents or records shall be made to the custodian  
13 of the record. The custodian of the record may then provide the requestor with the document or  
14 record upon payment of the actual cost of mailing or transmittal, the actual cost of reproduction,



1 or other fee established by statute or administrative rule. A requestor that makes an informal  
2 request requiring the dedication of staff time in excess of one hour may be required to pay the  
3 cost of the staff time necessary for the location, assembly, or reproduction of the public record.  
4 If any records are required or permitted to be made public upon request and no other rate is  
5 prescribed for reproduction or retrieval of such records, the Bureau of Administration shall  
6 establish, by rules promulgated pursuant to chapter 1-26, the maximum rate, or the formula for  
7 calculating rates, for reproduction and retrieval.

8 Section 4. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 For any informal request reasonably likely to involve a fee in excess of fifty dollars, the  
11 custodian shall provide an estimate of cost to the requestor prior to assembling the documents  
12 or records and the requestor shall confirm in writing his or her acceptance of the cost estimate  
13 and agreement to pay. The custodian may exercise discretion to waive or reduce any fee required  
14 under this section if the waiver or reduction of the fee would be in the public interest.

15 Section 5. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 If an informal request is denied in whole or in part by the custodian of a document or record,  
18 a written request may be made by the requestor pursuant to this section:

19 (1) A written request may be made to the public record officer of the public entity  
20 involved. The public record officer shall promptly respond to the written request but  
21 in no event later than ten business days from receipt of the request. The public record  
22 officer shall respond to the request by:

23 (a) Providing the record in whole or in part to the requestor upon payment of any  
24 applicable fees pursuant to sections 3 and 4 of this Act;

(b) Denying the request for the record; or

(c) Acknowledging that the public record officer has received the request and providing an estimate of the time reasonably required to further respond thereto;

(2) Additional time to respond to the written request under subsection (1)(c) of this section may be based upon the need to clarify the nature and scope of the written request, to locate and assemble the information requested, to notify any third persons or government agencies affected by the written request, or to determine whether any of the information requested is not subject to disclosure and whether a denial should be made as to all or part of the written request;

(3) If a written request is unclear, the public record officer may require the requestor to clarify which records are being sought. If the requestor fails to provide a written response to the public record officer's request for clarification within ten business days, the request shall be deemed withdrawn and no further action by the public records officer is required;

(4) If the public record officer denies a written request in whole or in part, the denial shall be accompanied by a written statement of the reasons for the denial;

(5) If the public record officer fails to respond to a written request within ten business days, or fails to comply with the estimate provided under subsection (1)(3) of this section without provision of a revised estimate, the request shall be deemed denied.

Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

If a public record officer denies a written request in whole or in part, or if the requestor objects to the public record officer's estimate of fees or time to respond to the request, a

requestor may within ninety days of the denial commence a civil action by summons or, in the alternative, file a written notice of review with the Office of Hearing Examiners. The notice of review shall be mailed, via registered or certified mail, to the Office of Hearing Examiners and shall contain:

- (1) The name, address, and telephone number of the requestor;
- (2) The name and business address of the public record officer denying the request;
- (3) The name and business address of the agency, political subdivision, municipal corporation, or other entity from which the request has been denied;
- (4) A copy of the written request;
- (5) A copy of any denial or response from the public record officer; and
- (6) Any other information relevant to the request that the requestor desires to be considered.

Section 7. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt, the Office of Hearing Examiners shall promptly mail a copy of the notice of review filed pursuant to section 6 of this Act and all information submitted by the requestor to the public record officer named in the notice of review. The entity denying the written request may then file a written response to the Office of Hearing Examiners within ten business days. If the entity does not file a written response within ten business days, the Office of Hearing Examiners shall act on the information provided. The Office of Hearing Examiners shall provide a reasonable extension of time to file a written response upon written request or agreement of parties.

Section 8. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

1       Upon receipt and review of the submissions of the parties, the Office of Hearing Examiners  
2 shall make written findings of fact and conclusions of law, and a decision as to the issue  
3 presented. Before issuing a decision, the Office of Hearing Examiners may hold a hearing  
4 pursuant to chapter 1-26 if good cause is shown.

5       Section 9. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7       The aggrieved party may appeal the decision of the Office of Hearing Examiners to the  
8 circuit court pursuant to chapter 1-26. In any action or proceeding under this Act, no document  
9 or record may be publicly released until a final decision or judgment is entered ordering its  
10 release.

11       Section 10. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13       The public record officer for the state is the secretary, constitutional officer, elected official,  
14 or commissioner of the department, office, or other division to which a request is directed. The  
15 public record officer for a county is the county auditor or the custodian of the record for law  
16 enforcement records. The public record officer for a first or second class municipality is the  
17 finance officer or the clerk or the custodian of the record for law enforcement records. The  
18 public record officer for a third class municipality is the president of the board of trustees or the  
19 custodian of the record for law enforcement records. The public record officer for an organized  
20 township is the township clerk. The public record officer for a school district is the district  
21 superintendent or CEO. The public record officer for a special district is the chairperson of the  
22 board of directors. The public record officer for any other entity not otherwise designated is the  
23 person who acts in the capacity of the chief financial officer or individual as designated by the  
24 entity.

Section 11. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The following forms are prescribed for use in the procedures provided for in sections 3 to 10, inclusive, of this Act, but failure to use or fill out completely or accurately any of the forms does not void acts done pursuant to those sections provided compliance with the information required by those sections is provided in writing.

**NOTICE OF REVIEW**

**REQUEST FOR DISCLOSURE OF PUBLIC RECORDS**

Date of Request: \_\_\_\_\_  
Name of Requestor: \_\_\_\_\_  
Address of Requestor: \_\_\_\_\_  
Telephone Number of Requestor: \_\_\_\_\_

Type of Review Being Sought:  
\_\_\_\_ Request for Specific Record  
\_\_\_\_ Estimate of Fees  
\_\_\_\_ Estimate of Time to Respond  
Short Explanation of Review Being Sought Including Specific Records Requested:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Public Record Officer:	_____
Address of Public Record Officer:	_____
Name of Governmental Entity:	_____
Address of Governmental Entity:	_____

*You must include with the submission of this Notice of Review - Request for Disclosure of Public Records form the following information: (1) A copy of your written request to the public record officer; (2) A copy of the public record officer's denial or response to your written request, if any; and (3) Any other information relevant to the request that you desire to be considered.*

*I hereby certify that the above information is true and correct to the best of my knowledge.*

***Signature of Requestor:*** \_\_\_\_\_

*The Notice of Review - Request for Disclosure of Public Records form shall be completed and submitted, via registered or certified mail, return receipt, to the following address:*

Office of Hearing Examiners

500 E. Capitol Avenue

Pierre, South Dakota 57501

605-773-6811

**SOUTH DAKOTA OFFICE OF HEARING EXAMINERS**

**NOTICE OF REQUEST FOR DISCLOSURE**

**OF PUBLIC RECORDS**

TO: (Public Record Officer & Governmental Entity) \_\_\_\_\_

\_\_\_\_\_ has filed a Notice of Review - Request for Disclosure of Public Records. A copy of the Notice of Review - Request for Disclosure of Public Records is attached for your review.

You may file a written response to the Notice of Review - Request for Disclosure of Public Records within ten (10) business days of receiving this notice, exclusive of the day of service, at the following address:

Office of Hearing Examiners

500 E. Capitol Avenue

Pierre, South Dakota 57501

605-773-6811

The Office of Hearing Examiners may issue its written decision on the information provided and will only hold a hearing if it deems a hearing necessary.

If you have any questions, please contact the Office of Hearing Examiners.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Office of Hearing Examiners